

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
)
ITT EDUCATIONAL SERVICES, INC., *et al.*¹) Case No. 16-07207-JMC-7A
)
Debtors.) Jointly Administered

**TRUSTEE'S 11th OMNIBUS MOTION TO COMPROMISE AND SETTLE
AVOIDANCE CLAIMS IN THE GROSS AMOUNT OF \$50,000.01 OR MORE**

Deborah J. Caruso, the chapter 7 trustee in this case (the "Trustee"), by counsel, pursuant to 11 U.S.C. §§ 105 and 363 and Rule 9019 of the Federal Rules of Bankruptcy Procedure, requests entry of an order authorizing the Trustee to compromise and settle the Avoidance Claims (as defined below) listed on Exhibit 1 on the following grounds:

I. JURISDICTION

1. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicate for relief are sections 105 and 363 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

II. BACKGROUND

4. On September 16, 2016 (the "Petition Date"), ITT Educational Services, Inc. ("ITT"), ESI Service Corp. ("ESI") and Daniel Webster College, Inc. ("Webster College," and together with ITT and ESI, the "Affiliated Debtors") filed voluntary petitions for relief under chapter 7 of the Bankruptcy Code. The Trustee was appointed interim trustee under section 701

¹ The debtors in these cases, along with the last four digits of their respective federal tax identification numbers are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].

of the Bankruptcy Code in each of the Affiliated Debtors' bankruptcy cases on the Petition Date, and in accordance with section 702(d) of the Bankruptcy Code, became the permanent case trustee on November 1, 2016 following the conclusion of the meeting of creditors held pursuant to section 341(a) of the Bankruptcy Code.

5. On October 4, 2016, the Court entered its *Order Granting Motion for Joint Administration of Chapter 7 Cases* [Docs 221 & 222], directing the Affiliated Debtors' bankruptcy cases to be jointly administered for procedural purposes only.

6. Pursuant to the *Order Granting Trustee's Motion for Authority to Settle Certain Classes of Controversies Pursuant to Bankruptcy Rule 9019(b)* (the "Settlement Authority Order") [Doc 2556], entered on May 30, 2018, the Trustee is required to obtain Court approval of settlements of causes of action under chapter 5 of the Bankruptcy Code (the "Avoidance Claims") that are in the gross amount of \$50,000.01 or more. In addition, the Settlement Authority Order authorizes the Trustee to file motions seeking approval of such settlements on an omnibus basis.

7. Attached and incorporated as Exhibit 1, is the schedule of settlements of Avoidance Claims in the gross amount of \$50,000.01 or more that have been entered into by the Trustee as of February 11, 2019,² which are subject to final approval by the Court.

III. RELIEF REQUESTED

8. The Trustee requests entry of an order, pursuant to sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019, authorizing the Trustee to (a) compromise and settle the Avoidance Claims listed on Exhibit 1 for the amounts listed, and (b) to retain the settlement proceeds from the settlements listed on Exhibit 1 for the general administration by the Affiliated Debtors' bankruptcy estates.

² Exhibit 1 does not include settlements included in prior motions filed with the Court.

IV. GROUNDS FOR GRANTING RELIEF

9. A court may authorize a trustee to enter into a settlement so long as it is a sound exercise of the trustee's business judgment. *See* 11 U.S.C. § 363(b); *In re UAL Corp.*, 443 F.3d 565, 571 (7th Cir. 2006) (use under section 363 of the Bankruptcy Code must “[make] good business sense”); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (section 363 involves exercise of fiduciary duties and requires an “articulated business justification”); *see also In re Olde Prairie Block Owners, LLC*, 448 B.R. 482, 492 (Bankr. N.D. Ill. 2011) (same). Moreover, when applying the “business judgment” standard to a use of estate property under section 363 of the Bankruptcy Code, a trustee's judgment is “entitled to great judicial deference as long as a sound business reason is given.” *See In re Efoora, Inc.*, 472 B.R. 481, 488 (Bankr. N.D. Ill. 2012).

10. Similarly, Bankruptcy Rule 9019(a) sets forth the requirements for compromises and settlements and permits a bankruptcy court to approve a trustee's “compromise or settlement” after notice and a hearing, if such settlement is “fair and equitable . . . and in the best interests of the bankruptcy estate.” *Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586 (7th Cir. 1994); *see also In re Energy Co-op., Inc.*, 886 F.2d 921, 927 (7th Cir. 1989) (“The benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate.”); *In re Smith*, No. 02-16450-JKC-7A, 2008 WL 4276171, at *2 (Bankr. S.D. Ind. Sept. 10, 2008) (same). Settlements should be approved unless “the settlement ‘falls below the lowest point in the range of reasonableness.’” *In re Commercial Loan Corp.*, 316 B.R. 690, 698 (Bankr. N.D. Ill. 2004) (quoting *Energy Co-op.*, 886 F.2d at 929); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007); *see also In re Artra Grp., Inc.*, 300 B.R. 699, 702 (Bankr. N.D. Ill. 2003). Settlements and compromises are favored in bankruptcy because they expedite case administration and reduce unnecessary administrative

costs. *Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000). In determining whether a compromise is in the best interests of the estate, the Court must compare “the settlement’s terms with the litigation’s probable costs and probable benefits.” *In re Am. Reserve Corp.*, 841 F.2d 159, 161 (7th Cir. 1987); *see also Doctors Hosp.*, 474 F.3d at 426 (“Among the factors the court considers are the litigation’s probability of success, complexity, expense, inconvenience, and delay, including the possibility that disapproving the settlement will cause wasting of assets.”) (internal quotation marks and citations omitted); *Commercial Loan*, 316 B.R. at 697 (holding that relevant factors a bankruptcy court should consider in approving a settlement include “the litigation’s probability of success, its complexity, and its ‘attendant expense, inconvenience and delay’” (quoting *Am. Reserve Corp.*, 841 F.2d at 161)).

11. For the proposed settlements of Avoidance Claims listed on Exhibit 1, the Trustee determined the settlement terms based on the merits of the settlement parties’ defenses to the Avoidance Claims, the risk to the Affiliated Debtors’ bankruptcy estates if the Avoidance Claims were litigated, and the expense the Affiliated Debtors’ bankruptcy estates would likely incur in connection with such litigation. Based upon these considerations and the Trustee’s business judgment, the Trustee respectfully submits that the settlements of the Avoidance Claims listed on Exhibit 1 are fair, equitable, in the best interest of the Affiliated Debtor’ bankruptcy estates and within the range of reasonableness for approval under Bankruptcy Rule 9019(a).

V. NOTICE

12. Pursuant to the *Notice, Case Management and Administrative Procedures* (the “Case Management Procedures”) approved by the Court on October 4, 2016 [Doc 220], the Trustee will serve a copy of this motion on the following (as defined in the Case Management Procedures): (a) the Core Group; (b) the Request for Notice List; (c) the Appearance List; and (d) those settlement parties listed on Exhibit 1.

NOTICE IS GIVEN, that pursuant to the Case Management Procedures, any objection to this motion must be in writing and filed with the Bankruptcy Clerk by no later than **4:00 p.m.** (prevailing Eastern Time) on **February 27, 2019**. Those not required or not permitted to file electronically must deliver any objection by U.S. mail, courier, overnight/express mail or in person at:

116 U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204

The objecting party must also serve a copy of the written objection upon the Trustee's counsel, at Counsel for Trustee Deborah J. Caruso, Rubin & Levin, P.C., 135 N. Pennsylvania Street, Suite 1400, Indianapolis, IN 46204. **If an objection is NOT timely filed, the requested relief may be granted without a hearing.**

NOTICE IS FURTHER GIVEN that in the event an objection to this motion is timely filed, a hearing on this motion and such objection will be conducted on **March 6, 2019 at 1:30 p.m.** (prevailing Eastern time), in Room 325 of the United States Courthouse, 46 East Ohio Street, Indianapolis, IN 46204.

WHEREFORE, the Trustee respectfully request entry of an order, (i) authorizing the Trustee to compromise and settle the Avoidance Claims listed on Exhibit 1 for the amounts listed, (ii) authorizing the Trustee to retain the settlement proceeds from the settlements listed on Exhibit 1 for the general administration by the Affiliated Debtors' bankruptcy estates, and (iii) granting the Trustee all other just and proper relief.

Respectfully submitted,

RUBIN & LEVIN, P.C.

By:/s/ Meredith R. Theisen

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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2019, a copy of the foregoing *Trustee's 11th Omnibus Motion to Compromise and Settle Avoidance Claims in the Gross Amount of \$50,000.01 or More* was filed electronically. Pursuant to Section IV.C.3(a) of the Case Management Procedures, notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on February 11, 2019, pursuant to Section IV.C.3(c) of the Case Management Procedures, a copy of the foregoing *Trustee's 11th Omnibus Motion to Compromise and Settle Avoidance Claims in the Gross Amount of \$50,000.01 or More* was emailed to the following:

Arlington ISD/Richardson ISD: Eboney Cobb at ecobb@pbfc.com
CEC Red Run, LLC: Alan M. Grochal at agrochal@tydingslaw.com
SWRE Deal V Building, LLC: Paul Weiser at pweiser@buchalter.com
Tarrant County/Dallas County: Elizabeth Weller at dallas.bankruptcy@publicans.com
Northwest Natural Gas Company: Ashlee Minty at Ashlee.Minty@nwnatural.com
Solar Drive Business, LLC: Chris W. Halling at challing@hallingmeza.com
Market-Turk Company: Jordan A. Lavinsky at jlavinsky@hansonbridgett.com
Taxing Authority for Harris County, Texas: John P. Dillman at houston_bankruptcy@lgbs.com
Texas Comptroller of Public Accounts: Rachel Obaldo at rachel.obaldo@oag.texas.gov
Clear Creek Independent School District: Carl O. Sandin at csandin@pbfc.com
Synchroly Bank: Recovery Management Systems Corporation at claims@recoverycorp.com
Bexar County: Don Stecker at sanantonio.bankruptcy@publicans.com
SWRE Deal V Building, LLC: Nancy K. Swift at nswift@buchalter.com
TN Dept. of Revenue: Michael Willey at michael.willey@ag.tn.gov
Florida Department of Education: Benman D. Szeto at benman.szeto@fldoe.org
Last Second Media, Inc.: T. Todd Egland at tegland@beldenblaine.com
Hung Duong: Kevin Schwin at kevin@schwinlaw.com

Travis County: Kay D. Brock at kay.brock@traviscountytexas.gov
Able Building Maintenance: Scott D. Fink at bronationalecf@weltman.com
Marathon Ventures, LLC: Daniel M. Karger at kargerlaw@gmail.com
Oklahoma County Treasurer: Tammy Jones at tammy.jones@oklahomacounty.org
JM Partners LLC: John Marshall at jmarshall@jmpartnersllc.com

I further certify that on February 11, 2019, pursuant to Section IV.C.3(b)(ii) of the Case Management Procedures, a copy of the foregoing *Trustee's 11th Omnibus Motion to Compromise and Settle Avoidance Claims in the Gross Amount of \$50,000.01 or More* was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

Chartpak, Inc. One River Road Leeds, MA 01053	Geometry Global LLC 636 11 th Avenue New York, NY 10036	Southern California Edison Company 2244 Walnut Grove Avenue Rosemead, CA 91770
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/s/ Meredith R. Theisen
Meredith R. Theisen

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